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In the Supreme Court of the United States.

OCTOBER TERM, 1891.

WILLIAM D. CROSS, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
} No. 1525.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO DISMISS.

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And now, April 25, 1892, comes the Solicitor-General, on behalf of the defendant in error, and moves the court to dismiss the writ of error herein for the reason that the Supreme Court of the District of Columbia is not a court of the United States within the meaning of section 6 of the act of February 6, 1889, entitled "An act to abolish circuit court powers of certain district courts of the United States, and to provide for writs of error in capital cases, and for other purposes" (25 Stat., 656), and this court therefore has no jurisdiction of said writ of error.

CHARLES H. ALDRICH,
Solicitor-General.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

The plaintiff in error was convicted of murder at the June, 1891, special term of the Supreme Court of the District of Columbia, and sentenced to death. He appealed from this sentence to the General Term, where the sentence was affirmed. He has now sued out a writ of error to this court.

The act of February 6, 1889, provides:

> That hereafter in all cases of conviction of crime the punishment of which provided by law is death, tried before any court of the United States, the final judgment of such court against the respondent shall, upon the application of the respondent, be reëxamined, reversed, or affirmed by the Supreme Court of the United States upon a writ of error, under such rules and regulations as said court may prescribe.

This motion assumes that the courts of the District of Columbia belong to the same class as the Territorial courts, whatever may be the differences in particulars. The one is established by act of Congress pursuant to the constitutional grant of power "to exercise exclusive legislation in all cases whatsoever over such district * * * as may * * * become the seat of the Government of the United States" (art. 1, sec. 8, Constitution); the other under a similar constitutional grant giving Congress power over the Territories or other property of the United States (art. 4, sec. 3, Constitution).

It also assumes that the courts of the District and of the Territories are to be distinguished from those courts in which is vested the judicial power conferred by the Constitution on the General Government. The latter are constitutional courts, courts of the United States; the former mere legislative courts designed for the conduct of the affairs of the District or Territory where located, and hence courts of such District or Territory. This distinction has been so frequently recognized, and the meaning of the term "court of the United States" so often defined by the decisions of this court, that we scarcely feel justified in entering upon any extended discussion in support of the motion.

In *McAllister* v. *United States* (141 U. S., 174) it was held that a person appointed "to be the judge of the district court of the district of Alaska is not a judge of a court of the United States within the meaning of the exception in 1768 of the Revised Statutes relating to the tenure of office of civil officers, and was, prior to its repeal, subject to removal before the expiration of his term of office by the President."

In this opinion the prior decisions are reviewed. Chief Justice Marshall is quoted as using the following language in *American Insurance Company* v. *Canter* (1 Pet., 511, 546):

> These courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general Government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the Government, or

> in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States. The jurisdiction with which they are invested is not a part of that judicial power which is defined in the third article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the Territories of the United States.

Mr. Justice Nelson, in *Benner* v. *Porter* (9 Howard, 235, 242), is quoted as follows:

> They are legislative governments, and their courts legislative courts, Congress, in the exercise of its powers in the organization and government of the Territories, combining the powers of both the Federal and State authorities. * * * The Territorial courts, therefore, were not courts in which the judicial power conferred by the Constitution on the Federal Government could be deposited.

Chief Justice Chase, in *Clinton* v. *Englebrecht* (13 Wall., 434, 447), is quoted as follows:

> The judges of the supreme court of the Territory are appointed by the President under the act of Congress, but this does not make the courts they are authorized to hold courts of the United States. This was decided long since in *The American Insurance Company* v. *Canter* (1 Pet., 546), and in the later case of *Benner* v. *Porter* (9 How., 235). * * *
>
> There is no Supreme Court of the United States, nor is there any district court of the United States in the sense of the Constitution in the Territory of Utah. The judges are not appointed for the same terms, nor is the jurisdiction which they exercise part

of the judicial power conferred by the Constitution on the General Government. The courts are the legislative courts of the Territory, created in virtue of the clause which authorizes Congress to make all needful rules and regulations respecting the Territories belonging to the United States.

Mr. Justice Bradley, in *Hornbuckle* v. *Toombs* (18 Wall., 648, 655), is quoted as follows:

> The acts of Congress respecting proceedings in the United States courts are concerned with and confined to those courts, considered as parts of the Federal system, and as invested with the judicial power of the United States expressly conferred by the Constitution, and to be exercised in correlation with the presence and jurisdiction of the several State courts and governments. They were not intended as exertions of that plenary municipal authority which Congress has over the District of Columbia and the Territories of the United States. * * * As before said, these acts have specific application to the courts of the United States, which are courts of a peculiar character and jurisdiction.

Mr. Justice Clifford, in *Good* v. *Martin* (95 U. S., 90–98), is quoted as follows:

> Territorial courts are not courts of the United States within the meaning of the Constitution, as appears by all the authorities.

Chief-Justice Waite, in *Reynolds* v. *United States* (98 U. S., 145, 154), is quoted as follows:

> By section 1910 of the Revised Statutes the district courts of the Territory have the same jurisdiction in all cases arising under the Constitution and

laws of the United States as is vested in the circuit and district courts of the United States; but this does not make them circuit and district courts of the United States. We have often so decided. They are courts of the Territories invested for some purposes with the powers of the courts of the United States.

And again, in *City of Panama* (101 U. S., 453, 460):

> Courts of this kind, whether created by an act of Congress or a territorial statute, are not, in strictness, courts of the United States; or in other words, the jurisdiction with which they are invested is not a part of the judicial power defined by the third article of the Constitution, but is conferred by Congress in the execution of the general powers which the legislative department possesses, to make all the needful rules and regulations respecting the public territory and other public property.

The court concludes—

> These cases close all discussion here as to whether territorial courts are of the class defined in the third article of the Constitution. It must be regarded as settled that courts in the Territories, created under the plenary municipal authority that Congress possesses over the Territories of the United States, are not courts of the United States created under the authority conferred by that article. And there is nothing in conflict with this view in *Page* v. *Burnstine* (102 U. S. 664), where it was held that section 858 of the Revised Statutes of the United States, relating to the competency as witnesses of parties to actions by or against executors, administrators, or guardians, applied to the courts of the District of Columbia as fully as to the circuit and district courts of the United States. That conclusion was reached, not because the

> courts of the District of Columbia were adjudged to be of the class in which the judicial power of the United States was vested by the Constitution, but because all the acts relating to the competency of witnesses, when construed together, indicated that that section of the Revised Statutes applied to the courts of the District of Columbia.
>
> For the reasons we have stated it must be assumed that the words "judges of the courts of the United States," in section 1768, were used with reference to the recognized distinction between courts of the United States and merely territorial or legislative courts.

To the same effect is *Ex parte Cooper* (decided February 29, 1892).

It was held in the *Heath Case* (decided March 21, 1892) that the judgments of the supreme court of the District of Columbia in criminal cases are not embraced by the provisions of the act of March 3, 1891. That act provided for appeals from district courts or existing circuit courts in cases "of a conviction of a capital or otherwise infamous crime."

Heath had been convicted of manslaughter. This decision is based upon the principle that the earlier act authorizing appeals and writs of error from the supreme court of the District of Columbia in the same cases and in like manner as provided by law in reference to the final judgments, orders, and decrees of the circuit courts of the United States embraces only such laws as regulated appeals in force at the time of the passage of the act. Subsequent acts regulating the jurisdiction of, and right of appeal from, the circuit and district courts of the United

States, are not incorporated therein by reference or relation, and do not apply to the courts of the District of Columbia.

If the courts of the District are to be regarded as circuit or district courts of the United States any appeal to the doctrine of relation or incorporation by reference would have been unnecessary, as they would have been within the express terms of the act of March 3, 1891.

If, then, the term "court of the United States" had by a long line of decisions acquired a settled interpretation which excluded the courts of the District of Columbia we must presume that Congress used it in the act of February 6, 1889, in its ordinary established sense.

An argument in support of this position is furnished by the fact noted in *McAllister* v. *United States* (*supra*), that where the Territories are intended to be included this is done by express language. An example of this is found in the act of March 3, 1891, sec. 13, extending the right of appeal from the courts of the Indian Territory, an unnecessary provision were the courts of that Territory courts of the United States.

Nor do we think there is anything in the reason of the law requiring that this fixed meaning of the term should be changed for the purpose of enabling this court to revise the judgments of the Supreme Court of the District of Columbia in criminal cases.

In our jurisprudence there is usually found a court of errors or review as to all important interests. The trial court is not allowed to finally dispose of questions affecting the life or large property interests of the citizen. There is

no reason, as we submit, why the criminal convicted of murder in the District of Columbia should have two courts of error or review.

The delays and chances of escape are thereby greatly increased and the effectiveness of the criminal laws correspondingly impaired. It is now, we believe, generally conceded that such laws depend for their efficiency not so much on the severity of the punishments prescribed as upon the certainty and promptness of such punishment.

We admit that these considerations would be more properly addressed to Congress were we seeking a change in prior decisions. Where, however, as in this case, we are opposing any change in the established decisions we feel at liberty to urge these considerations of public policy.

It is therefore respectfully submitted that the motion to dismiss the writ of error herein should be sustained.

CHARLES H. ALDRICH,
Solicitor-General.

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MOTION TO DISMISS.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

The only question involved in this motion to dismiss for want of jurisdiction is whether the Supreme Court of the District of Columbia is a court of the United States within the meaning of section 6, of the Act of February 6, 1889, entitled "An act to abolish circuit court powers of certain district courts of the United States, and to provide for writs of error in capital cases, and for other purposes," which reads as follows:

> That hereafter in all cases of conviction of crime the punishment of which provided by law is death, tried before any court of the United States, the final judgment of such court against the respondent shall, upon the application of the respondent, be re-examined, reversed or affirmed by the Supreme Court of the United States upon a writ of error, under such rules and regulations as said court may prescribe, etc.

The plaintiff in error maintains that it is such a court, and in support thereof desires to present a brief history of the Supreme Court of the District of Columbia with its powers and jurisdiction.

On the 27th day of February, 1801, Congress passed a law establishing the Circuit Court of the District of Columbia, and clothed it with all the powers and jurisdiction of circuit courts of the United States, and this court remained unchanged until March 3, 1863, when Congress enacted a law, abolishing the old Circuit Court of the District of Columbia and organized in its place the present Supreme Court of the District of Columbia, and invested it with all the powers and jurisdiction of the old Circuit Court. The Revised Statutes of the United States relating to the District of Columbia on this subject read as follows:

> Section 750. There shall be a Supreme Court of the District, which shall consist of a chief justice and four associate justices, who shall severally be appointed by the President, by and with the advice and consent of the Senate, *and shall hold their offices during good behavior.*
>
> Section 760. The Supreme Court shall possess the same powers and exercise the same jurisdiction as the circuit courts of the United States.
>
> Section 761. The justices of the Supreme Court shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of circuit courts.
>
> Section 762. Any one of the justices may hold a special term, with the same powers and jurisdiction possessed and exercised by district courts of the United States.
>
> Section 846. Any final judgment, order, or decree of the Supreme Court of the District may be reexamined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the same cases and in like manner as provided by law in reference to the final judgments, orders, and decrees of the circuit courts of the United States.

From the organization of this court in 1801 down to the present time, it has been treated legislatively as both a district and circuit court of the United States.

In the Act of Congress of April 29th, 1802, chapter 31, entitled "An act to amend the Judicial System of the United States," section 24 reads as follows:

> That the chief judge of the District of Columbia shall hold a district court of the United States, in and for the said district, on the first Tuesday of April, and on the first Tuesday of October in every year; which court shall have and exercise, within the said District, the same powers and jurisdiction which are by law vested in the district courts of the United States.

Again in the Act of Congress passed April 2, 1816, chapter 39, the following language is used in reference to this court:

> An act to limit the right of appeal from the Circuit Court of the United States for the District of Columbia.
>
> That no cause shall hereafter be removed from the Circuit Court of the United States for the District of Columbia to the Supreme Court of the United States by appeal or writ of error unless the matter in dispute shall be of the value of $1,000 or upwards exclusive of costs.

In like manner the United States Supreme Court has recognized this court as a Circuit Court of the United States, and explicitly speaks of and designates it as the Circuit Court of the United States for the District of Columbia in a number of cases, the following of which we desire to cite—

Van Ness et al. *vs.* Bank of the United States, 13 Peters, 17.

Decatur *vs.* Paulding, 14 Peters, 498.

Kendall *vs.* United States, 12 Peters, 524.

Cathcart *vs.* Robinson, 5 Peters, 282.

Ex parte Watkins, 7 Peters, 570.

McKenna *vs.* Fisk, 1 Howard, 249.

It is thus shown both by action of Congress and by the Supreme Court that this court has long been treated and considered as a circuit court of the United States.

It can no longer be controverted that the Supreme Court of the District of Columbia is a court of the United States, possessed of and clothed with all the powers of district and circuit courts of the United States, with a jurisdiction even greater than the circuit courts.

In the Supreme Court of the District of Columbia Justice Wylie, *in re* attachment of George E. Spencer, Mackey and MacArthur, 446–448, is quoted as follows:

> This court is a judicial court established in pursuance of the power of Congress to create inferior courts under the Constitution, as well as that other power which gives to Congress the authority to legislate in all cases over the District of Columbia.
>
> Then we have a court that has the same jurisdiction as a circuit court, the same powers as a circuit court, the same jurisdiction as a district court, the same powers as a district court, together with others. The powers and jurisdiction of this court are greater than belong to any court in the world, of a subordinate kind, probably, and extend over a greater number of subjects than the jurisdiction embraced by any other court. In my opinion the intention of Congress has always been that this court shall be in fact both a circuit and a district court of the United States; that process may issue from this district into any other district, as it might from one district into any other district, and that the laws regulating the process of a circuit or district court of the United States apply to this court for the same reasons that they apply to circuit and district courts.

The powers and jurisdiction of the old Circuit Court of the District of Columbia have also been very fully and exhaustively laid down by Chief Justice Cranch of the old circuit court in 4 Cranch, 372, and also by Chief Justice Marshall in Cohen *vs.* Virginia, 6 Wheat., 424.

In the Supreme Court of the District of Columbia, Chief Justice Cartter, in Noerr *et al. vs.* Brewer, 1 MacA., 508, is quoted as follows:

> We have had occasion at least twice to declare that this is a court of the United States, and in this determination we have been sustained by the Supreme Court of the United States.

In Kendall *vs.* The United States, 12 Peters, 524, the court not only held that this was a circuit court of the United States, but also that it had the power to issue a writ of mandamus to a public officer to do an act required of him by law, which power is possessed by no other circuit court of the United States.

Mr. Justice Matthews, in Embry *vs.* Palmer *et al.*, 107 U. S., 3, is quoted as follows:

> The Supreme Court of the District of Columbia is a court of the United States, and its judgment upon matters litigated before it is conclusive upon the parties, in every State and in every forum in which the same matters may be drawn in question, except for such causes as would be sufficient to set it aside in the courts of the District. The judgment, which is the subject-matter of the litigation, is that of the Supreme Court of the District of Columbia, which is a court of the United States. That the Supreme Court of the District of Columbia is a court of the United States, results from the right which the Constitution has given to Congress of exclusive legislation over the District.

While it is not maintained that the Supreme Court of the District of Columbia is a Circuit Court of the United States under the law organizing the circuit courts of the United States among the different States, still it must be conceded that it is a court of the United States having all the powers and jurisdiction of district and circuit courts and even greater jurisdiction than circuit courts, and that by custom

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While it is not maintained that the Supreme Court of the District of Columbia is a Circuit Court of the United States under the law organizing the circuit courts of the United States among the different States, still it must be conceded that it is a court of the United States having all the powers and jurisdiction of district and circuit courts and even greater jurisdiction than circuit courts, and that by custom

and usage, by judicial interpretion and legislative enactments, it is to-day virtually a Circuit Court of the United States.

Unlike the territories which have territorial governments and legislature and local self-government and whose justices are appointed for a term of four years and may be removed at the pleasure of the President, the District of Columbia is governed by Congress alone, acting not only as a legislature for the District, but also at the same time as the *legislature for the Union*. The justices of the Supreme Court of the District of Columbia are appointed, like all Circuit Court justices, by the President, by and with the advice and consent of the Senate, and like Circuit Court justices, hold their office during good behavior, and are and have been retired upon full pay under Section 714 of the Revised Seatutes of the United States in the same manner as all other Federal judges.

Unlike territorial courts, this court is a permanent and continuing one and must be so as long as the seat of the government remains here.

This is purely and solely a Federal court possessing not only all the powers and jurisdiction of circuit courts, but also, in addition, the further jurisdiction of compelling by writ of mandamus public officers to perform duties required of them by law, which jurisdiction is not possessed by any other Circuit Court.

This brings us to the consideration of Section 6 of the Act of February 6th, 1889, and the meaning and interpretation of the same.

This is the first law in the history of the Government passed by Congress conferring upon the Supreme Court of the United States appellate jurisdiction in all criminal cases where the punishment is death.

In Section 6 it provides that such an appeal can be taken from *any court of the United States* to the Supreme Court

of the United States, and the remaining provisions of this section clearly point out the manner and way in which such appeal may be perfected, the language of the section being mandatory and unequivocal in its provisions.

From a review of the law, it is clear that it was one passed in the interest of humanity, and to give one condemned to death, after trial in a court of the United States, the right to have his case re-examined, reversed, or affirmed by the Supreme Court.

Such was the unanimous opinion of Congress, which enacted the law, and a reference to page 993 of the Congressional Record of January 19, 1889, confirms this view, and reads as follows:

> Mr. ROGERS (a member of the Judiciary Committee of the House of Representatives): It will perhaps take three minutes to read the bill and put it upon its passage, and, inasmuch as it is in the interest of humanity to grant these writs of error *throughout the Union*, I ask unanimous consent that it may be put upon its passage at this time.
>
> Mr. RANDALL: As I understand it, this bill proposes to give to persons condemned to death an additional chance of life.
>
> Mr. ROGERS: Yes, sir; it simply proposes to grant to a party who may have been condemned to death in a Federal court, the right to have the law of his case reviewed upon the record by the Supreme Court of the United States.
>
> Mr. FORD: Which right he does not now possess.
>
> Mr. ROGERS: A right which he does not now possess and never has possessed in this country, although in every State in the Union a corresponding right exists with reference to cases arising under the State law. It is a right which ought to exist in every civilized government on earth.

This clearly and explicitly shows that the law-makers of this Government intended that the Act of February 6, 1889, should extend to all Federal courts of the Union, as their language plainly and unmistakably declares. They in-

tended that a man condemned to death in a court of the United States should have a right to appeal to the Supreme Court—a right which has existed in all the courts of the different States for many years.

The language of the act is very clear and unambiguous, and in no way technical; and the intent of Congress is plain in each and all of the provisions of Section 6. By the terms of this section in all criminal cases, in which the penalty is death, tried in *any* court of the United States, the defendant is given the right to appeal to this court on a writ of error for the purpose of having his case reviewed; and Congress clearly intended that it should apply to *any* Federal court, and therefore used the broad and exhaustive language employed in the act.

If the legislature has expressed its intention in the act, it will be carried out, though to the overriding of the ordinary rules of interpretation.

Farmers' Bank *vs.* Hale, 59 N. Y., 53.
Chapin *vs.* Crusen, 31 Wis., 209.

The interpretation should lean strongly to prevent *injustice*, and even great inconvenience.

Magdalen College Case, 11 Co., 66*b*, 73*b*.
Co. Lit., 360.
Commonwealth *vs.* Slack, 19 Pick., 304.
Meade *vs.* Deputy Marshal, 1 Brock., 324.
Murray *vs.* Gibson, 15 How. (U. S.), 421.
Ham *vs.* McClaws, 1 Bay., 93–98.
Robinson *vs.* Varnell, 16 Tex., 382.
The Ohio *vs.* Stuart, 10 Ohio, 582.
U. S. *vs.* Fisher, 2 Cranch, 358–386.
Hughes *vs.* Hughes, Carter, 125–136.
Ayers *vs.* Knox, 7 Mass., 306–310.
Putnam *vs.* Longley, 11 Pick., 487–490.

In this connection (1 T. R., 313, 314), Lord Mansfield said:

> Whatever doubts I may have in my own breast with respect to the policy and expedience of this law, yet, as long as it continues in force, I am bound to see it executed according to its meaning.

The Solicitor General in his brief has maintained that this act did not apply to the Supreme Court of the District of Columbia, but only to the Circuit Courts of the United States for the different States.

This fallacious position we have disputed, and do dispute, and in this connection we respectfully call attention to Section 93 of the Revised Statutes relating to the District of Columbia, which declares that—

> The Constitution and *all the laws* of the United States which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States.

Mr. Justice Harlan, in the case of Page *vs* Burnstine, 102 U. S., 664, is quoted as follows:

> The legal effect of the declaration that all the laws of the United States, not locally inapplicable, should have the same force and effect within this District as elsewhere in the United States, was to import into, or add to, the special Act of July 2, 1864, relating to the law of evidence in the District, the exception created by the Act of March 3, 1865, to the general statutory rule, excluding parties as witnesses. This is manifestly so, unless it be that a statute affecting the competency of parties as witnesses in actions by or against personal representatives was "locally inapplicable" to this District. But such a position cannot be maintained with sound reason. The same considerations of public policy which would require the enforcement of such a statute as that of March 3, 1865, in the Circuit and District courts of the United States, without regard to the laws of the

> respective States upon the same subject, would suggest its application in the administration of justice in the courts of this District. * * * These views do not at all conflict with the previous decisions of this court, holding that certain provisions of the General Statutes of the United States relating to the practice and proceedings in the "courts of the United States" were locally inapplicable to territorial courts. Those decisions, it will be seen, proceeded upon the ground, mainly, that the Legislatures of the Territories referred to in the exercise of power expressly conferred by Congress, had enacted laws covering the same subjects as to which the General Statutes of the United States referred. Clinton *vs.* Englebrecht, 13 Wall., 434; Hornbuckle *vs.* Toombs, 18 Wall., 648; Good *vs.* Martin, 95 U. S., 90. No such state of case exists here. The reasons assigned for the conclusion reached in those cases have no application to the question before us.

Mr. Justice Miller, in Wales *vs.* Whitney, (114 U. S., 564,) is quoted as follows:

> Section 846 of the Revised Statutes of the District of Columbia, which makes the jurisdiction of this court over judgments and decrees of the Circuit Courts of the United States the measure of its jurisdiction (except as regards the sum in controversy) over judgments and decrees of the Supreme Court of the District in similar cases, justifies the exercise of our appellate jurisdiction of the present case.

Mr. Justice James, of the Supreme Court of the District of Columbia, in General Term in *ex parte* Norvell, (decided February 8, 1892), is quoted as follows:

> This is a writ of certiorari, issued by the Criminal Court to Clarence A. Brandenburg, United States Commissioner, at the instance of the District Attorney of the United States for this District, and is certified to be heard here in the first instance. It appears that one Richard S. Norvell was, on the 12th day of

December, 1891, convicted in the Criminal Court on a plea of "guilty" to an indictment for embezzling moneys of the United States, and sentenced to pay a fine of five hundred dollars and to be imprisoned in the jail of this District "until said fine is paid." The convict was thereupon committed, and having remained in prison under that sentence for a period of thirty-five days, filed an application before Commissioner Brandenburg for his discharge under Section 1042 of the Revised Statutes of the United States.

That section * * * is in the following words:

"When a poor convict, sentenced by *any court of the United States* to pay a fine, or fine and cost, whether with or without imprisonment, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, he may make application in writing to any Commissioner of the United States Court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and, after notice to the District Attorney of the United States, the commissioner shall proceed to hear and determine the matter; and if, on examination, it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: * * * And thereupon such convict shall be discharged, the commissioner giving to the jailor or keeper of the jail a certificate setting forth the facts."

Before the time set for the hearing of this application this writ was issued commanding the commissioner to return his proceedings in the premises to the Criminal Court. The matter being certified to be heard here in the first instance, a motion is now filed that it be remanded to the commissioner, on the ground that he has full jurisdiction thereof.

The question to be considered by us is, whether the provisions under which he claims to act applies to convicts of this court.

The words of the statute are "When a poor convict sentenced by *any court* of the United States," &c. That these words are discriptive of this court was conclusively determined in Embrey *vs.* Palmer, 107 U. S., 3. * * *

It is to be observed that by this reference to the rule as stated in 21 Wall. (Dupasseur *vs.* Rochereau, 21 Wall, 130), where the judgment whose effect was denied was that of a circuit court, the Supreme Court held that the words "court of the United States" applied equally to this court and to the circuit courts of the United States. * * *

As part of its general authority, the power to give effect to the judgments of its courts is co-extensive with its jurisdiction.

That the Supreme Court of the District of Columbia is a court of the United States, results from the right of exclusive legislation over the District which the Constitution gives to Congress.

It is impossible to affirm more distinctly that this court and the circuit courts are equally courts of the United States. The principle suggested by the language of the Supreme Court in this case is that the latter are the instrumentalities by which the United States exercises in the States the judicial power belonging to its limited sovereignty therein, and that the forum is the instrumentality by which it exercises the judicial power belonging to its exclusive sovereignty. Though the application of judicial power by these courts differ, and the power is drawn from different provisions of the Constitution both are courts which exercise judicial power belonging to the United States, and are therefore alike courts of the United States.

But although the term "court of the United States" is applicable to both, it is a question of intention whether it is actually so *applied* by the legislature in any particular statute.

The statute from which this section was taken contained sixteen sections. Some of these plainly related to proceedings in the circuit and district courts; but others related to matters which in their

nature are equally incident to proceedings in this District and in the Territories. In such cases, and especially when the provision related rather to the rights and liabilities of parties than to the mere mode of proceeding, we have always held that the statute was intended by the legislature to apply to all the courts of the United States and therefore applied here. On that principle we have held that Section 2 of the Act of June 8, 1872, C. 333, Sec. 819, Rev. St., relating to peremptory challenges of jurors; and Section 4 of the Act of 3 March, 1835, c. 40, Sec. 1032, Rev. St., relating to prisoners standing mute, and Section 29 of the Act of April 30, 1790, c. 9, Secs. 1033 and 1034, Rev. St., relating to the delivery of a list of the jury and witnesses, and process to compel the attendance of witnesses, in capital cases, were necessarily intended to apply to those subjects in this District. So, too, we have applied two sections of the very statute now under consideration; namely, Sec. 8, 1025, Rev. St., relating to defects in indictments in matters of form, and Sec. 9, 1035, Rev. St., which authorizes a conviction of any offense necessarily included in that with which the defendant is charged in the indictment.

But if there were any doubt whether it was the intention of Congress that the provision in question should apply directly to all the courts of the United States, we suppose that it was made applicable by Section 34 of the Act of Feb. 21, 1871 (Ch. 62, Sec. 93, Rev. St., Dist. Col.)

Clearly, there is nothing in this provision relating to poor convicts which makes it locally inapplicable to convicts of this court. The statute declares a general principle that one who cannot, by reason of poverty, pay a fine, shall not be held in custody indefinitely in order to enforce its payment, and that principle has no local limitation."

Wherefore we maintain that this law is not inapplicable to the District of Columbia, and must therefore have its full force and effect here as well as in other parts of the Union.

It is therefore respectfully submitted that the motion to dismiss the writ of error herein should be denied.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 166.

JOSEPH OTERI, APPELLANT,

vs.

VINCENZO SCALZO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 8, 1888.